

## APPEAL NO. 010082

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on November 20, 2000, the hearing officer resolved the disputed issues by determining that the appellant (claimant) reached statutory maximum medical improvement (MMI) on February 19, 2000, and that her impairment rating (IR) is 28%. The claimant has appealed the MMI date determination, contending that the date should be October 11, 2000. The claimant also requests a determination that she had disability beginning on October 14, 1998. The respondent (carrier) urges the sufficiency of the evidence to affirm the hearing officer's decision. The determination that the claimant's IR is 28% has not been appealed and has become final by operation of law.

### DECISION

Affirmed.

In the prayer for relief at the conclusion of the claimant's appeal, she requests a determination that she had disability beginning on October 14, 1998. The record reflects that the claimant sought the addition of an issue of disability in a response to a benefit review conference (BRC) report and that she renewed this request at the hearing. The carrier opposed the request pointing out that the issue was not developed at the BRC and that the carrier would require a continuance if the issue were added. The hearing officer, after considering the contentions of the parties, denied the request, stating that she did not find good cause for adding the issue. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(e) (Rule 142.7(e)). The claimant's appeal only mentions the disability issue in the final sentence of the prayer for relief and as part of the request that the MMI date be found to be October 11, 2000. We do not regard the claimant's request for review as asserting error in the hearing officer's ruling denying her motion to add a disability issue and decline to infer such assignment of error from the prayer for relief. Even were we to consider the request for review as raising a point of error in this ruling, we would not find, from the record, that the hearing officer abused her discretion. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

Concerning the claimant's assertion of error regarding the date of statutory MMI, the claimant testified that after her low back injury of \_\_\_\_\_, she worked up to the Christmas holidays and, apparently, resumed working thereafter until January 8, 1997, when she commenced new employment, which did not require lifting. Both the claimant's testimony and her medical records reflect that she worked until February 19, 1998, when her condition deteriorated to the extent that she could not continue to work. The so-called "statutory" MMI date is reached upon the expiration of 104 weeks from the date on which income benefits begin to accrue. Section 401.011(30). Section 408.082(b) provides in part that if the disability does not begin at once after the injury occurs or within eight days of the occurrence but does result subsequently, weekly income benefits accrue on the eighth day after the date on which the disability began.

The claimant's contention with regard to the statutory MMI date is that she began losing time from work on October 14, 1998, thus, 104 weeks from that date yields a statutory MMI date of October 11, 2000. She contends, that, notwithstanding that she had to stop working on or about February 19, 1998, due to the progressive deterioration of her low back injury, her "disability" did not begin until a treating doctor stated that she had no ability to work. To the extent that we comprehend this contention, we find it to be without merit. We are satisfied that the hearing officer's determination of the date of statutory MMI is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Robert W. Potts  
Appeals Judge